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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/825,414	04/03/2001	Alan Collmer	19603/3243 (CRF D-2601C)	2043

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EXAMINER
KUBELIK, ANNE R

ART UNIT	PAPER NUMBER
1638	6

DATE MAILED: 06/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Offic Action Summary	Application No. 09/825,414	Applicant(s) COLLMER ET AL.	
	Examiner Anne R. Kubelik, Ph.D.	Art Unit 1638	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *1* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-37* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☐ Claim(s) _____ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☒ Claim(s) *1-37* are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

Election/Restrictions

Restriction to one of the following inventions is required under 35 U.S.C. 121:

I. Claims 1-6, 10-22, drawn to a nucleic acid, an expression system comprising the nucleic acid, cells and plants transformed with the nucleic acid, and a method of making the transgenic plant, classified in class 536, subclass 23.7, for example.

II. Claims 7-9, drawn to a protein and a composition comprising the protein, classified in class 530, subclass 350, for example.

III. Claims 20-21, drawn to a method of imparting disease resistance to a plant by transformation with a nucleic acid, classified in class 800, subclass 279, for example.

IV. Claims 22-24, drawn to a method of imparting disease resistance to a plant by topical application of a protein, classified in class 514, subclass 2, for example.

V. Claim 25, drawn to a method of making a plant hypersusceptible to colonization by nonpathogenic bacteria by transformation with a nucleic acid, classified in class 800, subclass 288, for example.

VI. Claims 26-28, drawn to a method of making a plant hypersusceptible to colonization by nonpathogenic bacteria by topical application of a protein, classified in class 427, subclass 4, for example.

VII. Claims 29-31 and 33, drawn to a method of causing eukaryotic cell death by introducing a cytotoxic *Pseudomonas* protein into a cell *in vitro*, classified in class 435, subclass 375, for example.

VIII. Claims 29-30 and 32-33, drawn to a method of causing eukaryotic cell death by introducing a cytotoxic *Pseudomonas* protein into a cell *in vivo*, classified in class 424, subclass 185.1, for example.

IX. Claims 34-36, drawn to a method of treating cancer by introducing a cytotoxic *Pseudomonas* protein into a patient, classified in class 514, subclass 44, for example.

X. Claim 37, drawn to method of treating cancer by administering to a patient a nucleic acid that encodes a cytotoxic *Pseudomonas* protein, classified in class 435, subclass 455, for example.

The inventions are distinct, each from the other because of the following reasons:

Inventions I and II are unrelated. Inventions are unrelated if it can be shown that they are not disclosed as capable of use together and they have different modes of operation, different functions, or different effects (MPEP § 806.04, MPEP § 808.01). In the instant case, the different inventions have different modes of operation and different functions. The first invention is distinct from the second invention because the former requires isolated DNA and methods for plant transformation and regeneration not required by the latter, while the latter requires isolated proteins not required by the former. Additionally, DNA and protein differ in composition, structure and function.

Inventions III-X are unrelated to each other. The different methods have different starting materials, different method steps and different end products.

Invention I and inventions III, V and X are unrelated to each other. The different methods have different starting materials, different method steps and different end products.

Invention II and inventions III and V are unrelated to each other. The methods of inventions III and V do not use the protein of invention II.

Invention I and inventions III, V and X are related as product and processes of use. The inventions can be shown to be distinct if either or both of the following can be shown: (1) the process for using the product as claimed can be practiced with another materially different product or (2) the product as claimed can be used in a materially different process of using that product (MPEP § 806.05(h)). In the instant case the nucleic acid of invention I can be used in DNA hybridization methods. Additionally, the claims are directed to three different methods of using the nucleic acids of invention I.

Invention II and inventions IV and VI-IX are related as product and processes of use. The claims are directed to five different methods of using the proteins of invention II; the product can be used in a materially different processes.

Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, fields of search, and classification, restriction for examination purposes as indicated is proper.

Nucleotide sequences encoding different proteins are structurally distinct chemical compounds that are unrelated to one another, as are different proteins structurally distinct chemical compounds that are unrelated to one another. These sequences are thus deemed to normally constitute **independent and distinct** inventions within the meaning of 35 U.S.C. 121. Absent evidence to the contrary, each such nucleotide sequence is presumed to represent an independent and distinct invention, subject to a restriction requirement pursuant to 35 U.S.C. 121 and 37 CFR 1.141 et seq (see MPEP 803.04 and 2434).

Upon election of a Group, Applicant is additionally required to select a single nucleotide sequence or amino acid sequence for said Group, as appropriate. This requirement is not to be construed as a requirement for an election of species, since each nucleotide or amino acid sequence is not a member of single genus of invention, but constitutes an independent and patentably distinct invention.

Applicant is advised that the reply to this requirement to be complete must include an election of the invention to be examined even though the requirement be traversed (37 CFR 1.143).

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anne R. Kubelik, whose telephone number is (703) 308-5059. The examiner can normally be reached Monday through Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy Nelson, can be reached at (703) 306-3218. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9306 for regular communications and (703) 872-9307 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the patent analyst, Kimberly Davis, at (703) 305-3015.

Anne R. Kubelik, Ph.D.
May 17, 2002

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SUPERVISORY PATENT EXAMINER
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